IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

Bail Appl..No. 5949 of 2007()

CRIME NO.449/07 OF NEYYATTINKARA POLICE STATION

PETITIONERS/ACCUSED NOS 3 & 5

---

1. ZABEER,AGED 29 YEARS,
   S/O. BADHISHA BEEGAM,P.M.MANZIL,
   ATHIYANNOOR VILLAGE, AVALUMMOODU P.O.

2. BAIJU, AGED 30,S/O. MUSTHAFA,
   VANDIPURAVILAKAM,ATHIYANNOOR VILLAGE,
   AVALUMMOODU P.O.

NAME OF THE 1ST PETITIONER IS CORRECT AS `ZABEER' INSTEAD OF `NAZEER' AS PER ORDER DATED 4/10/07 IN CRL.M.A.NO.5629/07.

BY ADV. SRI.R.GOPAN

RESPONDENTS: COMPLAINANTS

---

1. STATE OF KERALA REPRESENTED BY PUBLIC
   PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
   NEYYATTINKARA POLICE STATION.

BY P.P. SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 09/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 5949 OF 2007

Dated this the 9th day of October, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 3 and 5. They face allegations for offences punishable, inter alia, under Secs.353 and 225-B of the IPC. The crux of the allegations against the petitioners is that they along with others were members of an unlawful assembly of persons who allegedly secured the escape of the 1st accused, who was arrested in execution of a non-bailable warrant of arrest issued by the court. The petitioners are named as accused 3 and 5 in the F.I.R. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. The allegations in the F.I.R. do not constitute the offences alleged. In these

circumstances, the petitioners may be granted anticipatory bail, it is prayed. The learned counsel for the petitioners submits that the petitioners apprehend physical harm to themselves if they were taken into custody by the police. In this view of the matter also anticipatory bail may be granted to the petitioners, it is prayed.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that though the petitioners are named in the F.I.R., further investigation is necessary to correctly identify and collect the addresses of the petitioners and to confirm that they are the ones involved in the crime.

4. Having considered all the relevant inputs, I am satisfied that appropriate directions under Sec.438 of the Cr.P.C. can be issued in favour of the petitioners. Appropriate safeguards can be stipulated to allay the apprehension of the petitioners and the investigational needs projected by the learned Public Prosecutor.

5. In the result, this petition is allowed in part. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioners shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 16/10/07. They may apply for bail and the learned Magistrate shall consider such

application for bail after hearing the prosecution also and pass appropriate orders on the date of surrender itself.

(ii) If the petitioners do not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law as if these directions were not issued at all;

(iv) If the petitioners were arrested prior to their surrender on 16/10/07 as directed in clause (i) above, they shall be released forthwith on their executing bonds for Rs.25,000/- each without any sureties undertaking to appear before the learned Magistrate on 16/10/07.

Sd/-
(R. BASANT, JUDGE)

Nan/

//true copy//

P.S. to Judge